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EXAMINER
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STULII, VERA

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* DANIEL MARTIN WATSON and BILLIE SUNDAY WATSON

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Appeal 2016-002583  
Application 12/957,138  
Technology Center 1700

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Before MICHAEL P. COLAIANNI, CHRISTOPHER C. KENNEDY, and  
JULIA HEANEY, *Administrative Patent Judges*.

COLAIANNI, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) the final rejection of claims 1 and 3–13. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

We AFFIRM.

Appellants' invention is directed to methods for aging alcohol at an accelerated rate (Spec. ¶ 2).

Claim 1 is illustrative:

1. A method for rapidly aging spirits, comprising:

introducing an ethanol-based solution including organic compounds in a pressure vessel, the pressure vessel having a volume greater than a volume formed by the ethanol-based solution, the ethanol-based solution including alcohols;

substantially sealing the ethanol-based solution in the pressure vessel;  
and

increasing a reaction rate between the alcohols and the organic compounds by increasing a pressure to above 500 psig including increasing a temperature in a range from 110 to 450 °F in the pressure vessel for a period of time.

Appellants appeal the following rejections:<sup>1</sup>

1. Claims 1, 3–5, and 7–13 are rejected under 35 U.S.C. § 103(a) as unpatentable over Ackermann et al. (DD 212051 A; published Aug. 1, 1984 with English abstract).
2. Claim 6 is rejected under 35 U.S.C. § 103(a) as unpatentable over Ackermann in view of Duggins (US 4,173,656; issued Nov. 6, 1979).

Appellants argue independent claim 1 only (App. Br. 2–3).

### FINDINGS OF FACT & ANALYSIS

Appellants argue that there is no motivation to combine Slobodjanik's device with the pressures of 2 to 5 atmospheres with the pressures in Ackermann because Slobodjanik does not suggest using a driving force or pressure that exceeds the level of the riveting (App. Br. 2–3). Appellants contend that Slobodjanik teaches the formation of pores in brandy riveting

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<sup>1</sup> Due to an after final action amendment to the claims, the Examiner finds that the Slobodjanik reference is not necessary for the rejection (Ans. 2). The Examiner withdrew Slobodjanik from the statement of the rejection and rejected the claims using Ackermann as the primary reference (Ans. 2–6). The Examiner finds that this does not constitute a new ground of rejection, which Appellants do not dispute (Ans. 2; Reply Brief 1–2). Therefore, we understand the rejection (1) to be over Ackermann alone, and rejection (2) to be over Ackermann in view of Duggins.

accelerated with increasing pressure due to intensifying the molecular diffusion to a depth of riveting (App. Br. 3). Appellants argue that Slobodjanik teaches that using a low pressure enables the use of thin riveting, which is more economical (App. Br. 3). Appellants contend that Slobodjanik teaches away from using Ackermann's higher pressures (App. Br. 2). Appellants further contend that the Declaration of Daniel Martin Watson (hereinafter the "Watson Declaration") shows that at pressures of 200 psi and above the reactions that occur are unpredictable (App. Br. 3). Appellants contend that the additional experiments in the Watson Declaration varied wood-type, time and alcohol by volume (ABV) which declarant alleges show the unpredictable results of the claimed maturation process. *Id.*

Appellants' arguments regarding Slobodjanik are not persuasive because the Examiner does not rely on Slobodjanik in the rejection (Ans. 2). The Examiner, rather, relies on Ackermann alone to teach and suggest the subject matter of claim 1 (Ans. 2–4). Although the Examiner removed Slobodjanik as part of the rejection in the Answer, Appellants do not argue that the rejection is a new ground or otherwise traverse the removal of the Slobodjanik reference (Reply Br. *generally*).

The Examiner finds that Ackermann teaches temperatures and pressures that overlap with the temperatures and pressures recited in the claims (Ans. 3–4). The Examiner finds that the overlap in temperature and pressure establishes a prima facie case of obviousness with respect to the claimed temperatures and pressures. *Id.* Appellants do not dispute these findings of the Examiner.

Appellants argue in the Reply Brief for the first time that Slobodjanik's vent would be triggered to maintain a lower pressure (e.g., 5 atm) so that it would not have been able to achieve Ackermann's 200 psi pressure. There is no reason why this argument could not have been made in the principal Brief. We shall not consider such an untimely argument. 37 C.F.R. § 41.41(b)(2). Moreover, the Examiner no longer relies on Slobodjanik in the rejection, so the argument is moot.

Appellants' argument that the Watson Declaration shows that at pressures of 200 psi and higher the reactions in the alcoholic beverage are unpredictable is not persuasive. It appears that Appellants are attempting to show that it was unexpected that Appellants would have been able to achieve a desirable alcoholic product at a pressure of 200 psi or higher. The Examiner makes findings regarding the evidence in the Watson Declaration (Ans. 7–9), which we adopt as our own. Appellants do not respond to the Examiner's findings regarding the evidence in the Watson Declaration (Reply Br. generally). Appellants' evidence is not commensurate in scope with the claimed invention. Appellants' evidence includes a few examples of different types of woods (i.e., bourbon cask, an old log and a split firewood log (oak)) with alcohol by volume (ABV) varied (i.e., 6%, 12%, 30%, 65% and 85%) (Watson Dec. ¶¶ 7, 11). Appellants' claim 1 is broader than this showing such that it is insufficient to rebut the prima facie case.

Moreover, Appellants' argument that the reactions in the alcoholic product are unpredictable at 200 psi and higher is undercut by Ackermann's ability to make a suitable alcoholic product using such pressures in the reaction vessel. In other words, Ackermann shows that Appellants' result is not unexpected.

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Application 12/957,138

On this record, we affirm the Examiner's § 103 rejections.

#### DECISION

The Examiner's decision is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED